

111TH CONGRESS
1ST SESSION

S. 537

To amend chapter 111 of title 28, United States Code, relating to protective orders, sealing of cases, disclosures of discovery information in civil actions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2009

Mr. KOHL (for himself and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend chapter 111 of title 28, United States Code, relating to protective orders, sealing of cases, disclosures of discovery information in civil actions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sunshine in Litigation
5 Act of 2009”.

1 **SEC. 2. RESTRICTIONS ON PROTECTIVE ORDERS AND SEAL-**
 2 **ING OF CASES AND SETTLEMENTS.**

3 (a) IN GENERAL.—Chapter 111 of title 28, United
 4 States Code, is amended by adding at the end the fol-
 5 lowing:

6 **“§ 1660. Restrictions on protective orders and sealing**
 7 **of cases and settlements**

8 “(a)(1) A court shall not enter an order under rule
 9 26(c) of the Federal Rules of Civil Procedure restricting
 10 the disclosure of information obtained through discovery,
 11 an order approving a settlement agreement that would re-
 12 strict the disclosure of such information, or an order re-
 13 stricting access to court records in a civil case unless the
 14 court has made findings of fact that—

15 “(A) such order would not restrict the disclo-
 16 sure of information which is relevant to the protec-
 17 tion of public health or safety; or

18 “(B)(i) the public interest in the disclosure of
 19 potential health or safety hazards is outweighed by
 20 a specific and substantial interest in maintaining the
 21 confidentiality of the information or records in ques-
 22 tion; and

23 “(ii) the requested protective order is no broad-
 24 er than necessary to protect the privacy interest as-
 25 serted.

1 “(2) No order entered in accordance with paragraph
2 (1), other than an order approving a settlement agree-
3 ment, shall continue in effect after the entry of final judg-
4 ment, unless at the time of, or after, such entry the court
5 makes a separate finding of fact that the requirements
6 of paragraph (1) have been met.

7 “(3) The party who is the proponent for the entry
8 of an order, as provided under this section, shall have the
9 burden of proof in obtaining such an order.

10 “(4) This section shall apply even if an order under
11 paragraph (1) is requested—

12 “(A) by motion pursuant to rule 26(c) of the
13 Federal Rules of Civil Procedure; or

14 “(B) by application pursuant to the stipulation
15 of the parties.

16 “(5)(A) The provisions of this section shall not con-
17 stitute grounds for the withholding of information in dis-
18 covery that is otherwise discoverable under rule 26 of the
19 Federal Rules of Civil Procedure.

20 “(B) No party shall request, as a condition for the
21 production of discovery, that another party stipulate to an
22 order that would violate this section.

23 “(b)(1) A court shall not approve or enforce any pro-
24 vision of an agreement between or among parties to a civil
25 action, or approve or enforce an order subject to sub-

1 section (a)(1), that prohibits or otherwise restricts a party
2 from disclosing any information relevant to such civil ac-
3 tion to any Federal or State agency with authority to en-
4 force laws regulating an activity relating to such informa-
5 tion.

6 “(2) Any such information disclosed to a Federal or
7 State agency shall be confidential to the extent provided
8 by law.

9 “(c)(1) Subject to paragraph (2), a court shall not
10 enforce any provision of a settlement agreement described
11 under subsection (a)(1) between or among parties that
12 prohibits 1 or more parties from—

13 “(A) disclosing that a settlement was reached
14 or the terms of such settlement, other than the
15 amount of money paid; or

16 “(B) discussing a case, or evidence produced in
17 the case, that involves matters related to public
18 health or safety.

19 “(2) Paragraph (1) does not apply if the court has
20 made findings of fact that the public interest in the disclo-
21 sure of potential health or safety hazards is outweighed
22 by a specific and substantial interest in maintaining the
23 confidentiality of the information.

24 “(d) When weighing the interest in maintaining con-
25 fidentiality under this section, there shall be a rebuttable

1 presumption that the interest in protecting personally
 2 identifiable information relating to financial, health or
 3 other similar information of an individual outweighs the
 4 public interest in disclosure.

5 “(e) Nothing in this section shall be construed to per-
 6 mit, require, or authorize the disclosure of classified infor-
 7 mation (as defined under section 1 of the Classified Infor-
 8 mation Procedures Act (18 U.S.C. App.)).”.

9 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 10 The table of sections for chapter 111 of title 28, United
 11 States Code, is amended by adding after the item relating
 12 to section 1659 the following:

“1660. Restrictions on protective orders and sealing of cases and settlements.”.

13 **SEC. 3. EFFECTIVE DATE.**

14 The amendments made by this Act shall—

15 (1) take effect 30 days after the date of enact-
 16 ment of this Act; and

17 (2) apply only to orders entered in civil actions
 18 or agreements entered into on or after such date.

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